

76-110711

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEPHANIE KIPPERMAN, on behalf of
Plaintiff and all persons similarly
situated,

Plaintiff,

vs.

JOHN McCONE; RICHARD HELMS; JAMES
SCHLESINGER; J. EDWARD DAY; WILLIAM
COTTER; THOMAS KARAMESSINES; GEORGE
BUSH, DIRECTOR OF CENTRAL INTELLIGENCE;
JOHN MITCHELL; UNITED STATES OF AMERICA;
and an unknown number of unnamed present
and former employees of the United States,

Defendants.

NO. C-75-1211 CBR

THIRD AMENDED
COMPLAINT AND DEMAND
FOR JURY TRIAL

Plaintiff alleges:

COUNT ONE

1.

Subject-matter jurisdiction is conferred on this
Court by 5 U.S.C. §§ 551 et seq; 28 U.S.C. § 1331; United States
Constitution, Amendments 1, 4, 5, 9, and 10; United States
Statutes and Postal Regulations; and by the doctrine of pendent
jurisdiction.

2.

The amount in controversy, exclusive of interest and

1 costs, exceeds the sum or value of \$10,000.00.

2 3.

3 Plaintiff, Stephanie Kipperman, is a citizen of the
4 United States, over the age of twenty-one years. At the time of
5 filing this Complaint, at the time when she first became aware of
6 the acts complained of herein, and during most of the time the
7 acts complained of as to her occurred, Plaintiff resided in the
8 Northern District of California (hereinafter "District").

9 4.

10 A. Plaintiff, and the members of Plaintiff's class,
11 are American citizens who, at times between 1953 and 1973,
12 communicated by first class mail with, and received sealed mail
13 from, persons in foreign countries, including but not limited to,
14 the Soviet Union, and Communist countries in the Far East.

15 B. All such communication was with a reasonable
16 expectation that Defendants named and unnamed would not engage in
17 the acts herein complained of.

18 C. Plaintiff, and the members of Plaintiff's class,
19 have so communicated on numerous occasions, concerning personal
20 and private matters and thoughts, never in any manner so as to
21 arouse any reasonable suspicion or to create any justification
22 for the acts herein complained of.

23 D. The identities of the class members are unknown to
24 Plaintiff, but will be shown by Defendants' records. The number
25 of class members is so large as to make a joinder of each
26 impracticable. As to Plaintiff and each class member, identical
27 issues of law and fact exist as to the liability of each
28 Defendant. Plaintiff will fairly and adequately represent the
29 interests of the class.

30 5.

31 At all times, each Defendant acted as an agent of
32 Defendant United States of America, with the knowledge, consent

1 and approval of said Defendant, or their actions were ratified
2 by said Defendant.

3 All of the acts herein complained of were, however,
4 unlawful, and were at all times outside the course and scope of
5 the agency and employment of the individual Defendants, or if
6 within the scope of the agency and employment of the individual
7 Defendants, in violation of the United States Constitution,
8 United States statutes, Postal Regulations, and therefore without
9 legal authority.

10 6.

11 Defendant United States is liable for ratifying the
12 acts of individual Defendants, or for being grossly negligent
13 and remaining uninformed of the illegal character of said acts,
14 or for intentionally remaining uninformed of the illegal
15 character of these acts. Such ratification, or grossly negligent
16 or intentional ignorance of Defendants' acts permitted Defendants
17 to carry out the acts complained of.

18 7.

19 Defendants McCone, Helms and Schlesinger were at
20 material times Directors of Central Intelligence and the heads
21 of the United States Central Intelligence Agency who directed or
22 approved or ratified the acts herein complained of.

23 8.

24 Defendant Day was at material times Postmaster General
25 of the United States who directed or approved or ratified the
26 acts herein complained of.

27 9.

28 Defendant Cotter was at material times Chief Postal
29 Inspector of the United States Post Office Department who directed
30 or approved or ratified the acts herein complained of.

31 10.

32 Defendant Karamessines was at material times an employee

1 of the United States Central Intelligence Agency who directed or
2 approved or ratified the acts herein complained of.

3 11.

4 Defendant Mitchell was at material times the Attorney
5 General of the United States who directed or approved or
6 ratified the acts herein complained of.

7 12.

8 Defendant Bush is the Director of Central Intelligence
9 and head of the United States Central Intelligence Agency, is
10 sued for purposes of injunctive relief only and is named herein
11 pursuant to Rule 25(d), F.R. Civ. Pr.

12 13.

13 Defendant United States of America at material times
14 employed the foregoing Defendants, and other persons described
15 hereafter, and directed or approved or ratified the acts herein
16 complained of, or intentionally or with gross negligence remained
17 uninformed of the illegal character of said acts.

18 14.

19 The individual unnamed Defendants, present and former
20 employees of the United States, were and are employees of the
21 United States Central Intelligence Agency, the United States
22 Post Office Department and United States Postal Service, the
23 United States Department of Justice, and other agencies of
24 Defendant United States of America, who actually perpetrated the
25 acts herein complained of, or who joined in the conspiracy here-
26 inafter described, or who directed or approved and ratified the
27 acts herein complained of.

28 15.

29 All Defendants herein, and other persons unnamed,
30 conspired with one another or joined an ongoing conspiracy formed
31 at some time in 1952. Said conspiracy continued at least until
32 1973. The object of this conspiracy was to utilize normal mail

1 routing to channel mail to and from certain foreign nations,
2 including but not limited to the Soviet Union and Communist
3 countries in the Far East, to one or more central locations, and
4 at said locations to divert this mail out of its lawful and
5 authorized flow, to pass through the hands of certain unnamed
6 and unknown Defendants and employees of the Central Intelligence
7 Agency and United States Postal Service; said unnamed and unknown
8 employees would examine the face of such mail, sent from or to
9 Plaintiff and class members; said unnamed and unknown agents
10 would copy the exteriors of certain of the envelopes so examined;
11 said unnamed and unknown agents would open, examine, copy and
12 analyze the contents of certain of the envelopes so examined;
13 said unnamed and unknown agents, and other persons unknown to
14 Plaintiff, would maintain files, dossiers, and data banks con-
15 taining the names acquired from the activity described above,
16 including the names of Plaintiff and certain class members;
17 Defendants, their agents, and other persons unknown and unnamed,
18 would report information so acquired to other persons and agen-
19 cies of Defendant United States of America, including, but not
20 limited to, the Federal Bureau of Investigation. Furthermore,
21 it was an object of said conspiracy to deliberately and fraudu-
22 lently conceal from the public, the Plaintiff and class members,
23 the acts herein complained of. Said fraudulent concealment was
24 successful and continued until a time within the one year
25 preceding the filing of this action.

26 16.

27 In the doing of the aforesaid acts and conduct, and in
28 the doing of the below-described acts and conduct, each named and
29 unnamed Defendant, acted as agent, servant, partner, joing
30 venturer, aider and abettor and co-conspirator of one another.

31 17.

32 In carrying out the described conspiracy, certain overt

1 acts occurred in this District, including but not limited to:

- 2 A. Unknown and unnamed agents of the named
3 and unnamed co-conspirators set up a
4 central location in San Francisco,
5 California, and carried out the acts
6 complained of herein with regard to
7 mail to and from Communist countries
8 of the Far East.
- 9 B. Co-conspirators, both named and unnamed
10 herein, with the consent and approval
11 of all other co-conspirators, utilized
12 certain United States employees, to-wit
13 mail carriers, to pick up Plaintiff's
14 mail to the Soviet Union in this District,
15 and to transport it within this District
16 making possible its later examination,
17 copying or opening. Furthermore, these
18 employees of the United States segregated
19 the mail of Plaintiffs and others, within
20 this District, into that class of mail
21 which was to be examined, copied or opened,
22 thereby making possible and facilitating,
23 said illegal and unauthorized acts. All
24 co-conspirators knew, or should have known,
25 that the activities of said employees of
26 the United States would extend into this
27 District, and that said employees would
28 avail themselves of the roads, police
29 protection, and other benefits provided
30 by the State of California in this
31 District.

32 //

18.

The acts and conduct herein complained of were discovered within the one year preceding the filing of this action, and could not reasonably have been discovered before that time, on account of the unlawful acts and conduct previously described.

19.

All Defendants herein, named and unnamed, and all co-conspirators previously described, knew or should have known that the acts herein complained of were unlawful. Nevertheless, Defendants and their co-conspirators persisted in the unlawful actions with the intent and purpose knowingly to violate and disregard Plaintiff's rights and those of Plaintiff's class, under the Constitution, laws, and regulations of the United States. Said acts were malicious, intentional, and oppressive, and were carried out with the intent to deprive Plaintiff and the class members of their lawful rights. Accordingly, Plaintiff and each class member herein, are entitled to exemplary damages according to proof.

20.

Commencing prior to 1953, and continuing at least until 1973, Defendants, named and unnamed, and the co-conspirators described previously, carried out an unlawful course of conduct in violation of Plaintiff's and the class members' rights under the Constitution, laws and regulations of the United States, which course of conduct constituted an unlawful invasion of privacy. On information and belief, said acts and course of conduct included but were not limited to, the copying of the exterior of the envelopes of private, sealed, first class mail of Plaintiff, and her class, sent to and from persons in foreign countries, including, but not limited to, the Soviet Union and one or more Communist countries in the Far East. Said acts, as to Plaintiff, were directed at mail sent to and from persons in

1 the Soviet Union.

2 Said acts of Defendants, named and unnamed, and their
3 co-conspirators, were at all times, and in each instance, delib-
4 erate, intentional and knowing violations of the Constitution, laws
5 and regulations of the United States.

6 21.

7 On information and belief, said acts included, but were
8 not limited to, the above-described copying of exteriors of enve-
9 lopes, and the maintenance of files and dossiers and data banks
10 reflecting the information unlawfully acquired about Plaintiff and
11 her class, and the reporting of such information to others.

12 22.

13 Said acts of Defendants, named and unnamed, and their
14 co-conspirators, constituted an intentional, deliberate, and
15 malicious effort to deprive Plaintiff and the class members of
16 their rights under The United States Constitution, statutes, and
17 regulations and constituted a malicious deprivation of Plaintiffs'
18 rights of free speech, the right to be free from unreasonable
19 searches and seizures, the right not to be deprived of liberty
20 and property without due process of law, the right to be free
21 from invasions of privacy, the right to communicate in private via
22 the mails, and the rights reserved to the people of the United
23 States and not granted to the Federal Government.

24 23.

25 As a result of the acts complained of herein, Plaintiff,
26 and her class, have suffered, shock, anger and mental distress.

27 24.

28 The effects of the acts complained of herein has been,
29 and will continue to be, to chill and impair the rights of
30 Plaintiff, her class, and all United States citizens, to speak,
31 think, and communicate their thoughts in writing to other persons.

32 25.

The acts complained of herein constituted an abuse of

1 discretion by United States agencies, including, but not limited
2 to, the Central Intelligence Agency, and the United States Postal
3 Department, and were in violation of the United States Constitu-
4 tion, and certain United States statutes and regulations, inclu-
5 ding 18 U.S.C. §§ 1701-1703, 39 U.S.C. § 4057, and C.F.R. §§
6 233.2 and 447.91.

7 26.

8 Unless restrained and enjoined, Defendant United States
9 of America, by and through its agencies, is likely to, and will
10 again engage, in the acts complained of herein.

11 WHEREFORE, Plaintiff, and class members request relief
12 as prayed for below.

13 COUNT TWO

14 1.

15 Plaintiff re-alleges and incorporates herein by reference
16 each and every allegation contained in Paragraphs 1 through 19,
17 inclusive, of COUNT ONE set forth above.

18 2.

19 Commencing prior to 1953, and continuing until at least
20 1973, Defendants, named and unnamed, and their co-conspirators,
21 violated Plaintiffs' and the class members' rights under the
22 Constitution, laws and regulations of the United States.. On
23 information and belief, said acts included, but were not limited
24 to, the unlawful and indiscriminate opening of private, sealed,
25 and first class mail of Plaintiff, and her class, to and from
26 persons in foreign countries, including but not limited to, the
27 Soviet Union and one or more Communist country in the Far East.
28 Such acts, as to Plaintiff, consisted of the unlawful and indis-
29 criminate opening of private, sealed and first class mail of
30 Plaintiff to and from persons in the Soviet Union. Said acts,
31 as to Plaintiff and her class, further included, but were not
32 limited to, the examination and copying of the contents of

1 envelopes so opened, the analysis of these contents, the
2 maintenance of files, dossiers, and data banks reflecting the
3 information unlawfully acquired from such opened envelopes,
4 and the reporting of such information to other Defendants, and
5 co-conspirators, including, but not limited to, the Federal
6 Bureau of Investigation.

7 Said acts of Defendants were at all times, and in each
8 instance, deliberate, intentional, knowing, unlawful violations
9 of the Constitution, laws and regulations of the United States.

10 3.

11 Said acts of Defendants, named and unnamed, and co-
12 conspirators, constituted an intentional, deliberate and malicious
13 effort to deprive Plaintiff and the class members of their rights
14 under the United States Constitution, statutes, and regulations,
15 and constituted a malicious deprivation of their rights of free
16 speech, the right to be free from unreasonable searches and
17 seizures, the right not to be deprived of liberty and property
18 without due process of law, the right to be free from invasions
19 of privacy, the right to communicate in private via the mails,
20 and the rights reserved to the people of the United State and
21 not granted to the Federal Government.

22 4.

23 As a result of the acts complained of herein, Plaintiff
24 and her class, have suffered shock, anger and mental distress.

25 5.

26 The effect of the acts complained of herein has been,
27 and will continue to be, to chill and impair the rights of
28 Plaintiff, her class, and all United States citizens, to speak,
29 think, and communicate their thoughts in writing to other persons.

30 6.

31 The acts complained of herein constituted an abuse of
32 discretion by United States agencies, including, but not limited

1 to, the Central Intelligence Agency, and the United States Postal
2 Department, and were in violation of the United States Constitu-
3 tion, and certain United States statutes and regulations, inclu-
4 ding 18 U.S.C. §§ 1701-1703, 39 U.S.C. § 4057, and C.F.R. §§
5 233.2 and 447.91.

6 26.

7 Unless restrained and enjoined, Defendant United States
8 of America, by and through its agencies, is likely to, and will
9 again engage, in the acts complained of herein.

10 WHEREFORE, Plaintiff and class members request relief
11 as prayed for below.

12 COUNT THREE

13 1.

14 Subject-matter jurisdiction is conferred on this court
15 by 5 U.S.C. §§ 551 et seq; 28 U.S.C. §§ 1339 and 1346; The United
16 States Constitution, Amendments 1, 4, 5, 9 and 10; United States
17 Statutes and Regulations; and by the doctrine of pendent juris-
18 diction.

19 2.

20 The amount in controversy, exclusive of interest and
21 costs, is less than the sum or value of \$10,000.00.

22 3.

23 Plaintiff, and the class members, re-allege and
24 incorporate herein by reference each and every allegation con-
25 tained in Paragraphs 3 through 19, inclusive, of COUNT ONE, set
26 forth above.

27 4.

28 Commencing prior to 1953, and continuing at least
29 until 1973, Defendants, named and unnamed, and their co-conspira-
30 tors, carried out an unlawful course of conduct in violation of
31 Plaintiffs and the class members' rights under the Constitution,
32 laws, and regulations of the United States, which constituted an

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1 unlawful invasion of privacy. On information and belief, such
2 acts and course and conduct, consisted of, but was not limited
3 to, the diversion of first-class mail sent by Plaintiff and her
4 class to and from certain foreign countries, including, but not
5 limited to the Soviet Union and Communist countries in the Far
6 East. Said mail was diverted from its normal and unlawful flow,
7 and was subject to unauthorized examination of the exterior of its
8 envelopes, and the delay of such mail for the purpose of carrying
9 out the unlawful examination described. As to Plaintiff, such
10 acts were limited to mail sent to and received from persons in
11 the Soviet Union.

12 5.

13 Said acts were at all times and each instance deliberate,
14 intentional, knowing, unlawful violations of the Constitution,
15 laws and regulations of the United States.

16 6.

17 Said acts of Defendants, named and unnamed, and co-
18 conspirators, constituted an intentional, deliberate, and
19 malicious effort to deprive Plaintiff and the class members of
20 their rights under the United States Constitution, statutes, and
21 regulations, and constituted a malicious deprivation of their rights
22 of free speech, the right to be free from unreasonable searches
23 and seizures, the right not to be deprived of liberty and property
24 without due process of law, the right to be free from invasion
25 of privacy, the right to communicate in private via the mails, and
26 the right reserved to the people of the United States and not
27 granted to the Federal Government.

28 7.

29 As a result of the acts complained of herein,
30 Plaintiff and her class have suffered shock, anger, and mental
31 distress.

32 //

1 8.

2 The effect of the acts complained of herein has been,
3 and will continue to be, to chill and impair the rights of
4 Plaintiff, and her class, and all United States citizens, to
5 speak, think, and communicate their thoughts in writing to other
6 persons.

7 9.

8 The acts complained of herein constituted an abuse of
9 discretion by United States agencies, including, but not limited
10 to, the Central Intelligence Agency, and The United States
11 Postal Department, said acts being in violation of the United
12 States Constitution, and certain United States statutes and
13 regulations, including, but not limited to, 18 U.S.C. §§ 1701-
14 1703, and C.F.R. §§ 233.2 and 447.91.

15 10.

16 Unless restrained and enjoined, Defendant United States
17 of America, by and through its agencies, is likely to, and will
18 again engage, in the acts complained of herein.

19 WHEREFORE, Plaintiff and class members request relief
20 as prayed for below.

21
22 RELIEF

23 Plaintiff requests the following relief:

24 Pendente Lite

25 1. An order directing Defendants to disclose the
26 identities of unnamed and unknown Defendants and co-conspirators,
27 under an appropriate protective order;

28 2. An order directing Defendants, and their agents,
29 to take no steps to open or maintain any file or dossier on any
30 class member, on Plaintiff, or on counsel for Plaintiff;

31 3. An order directing Defendants to identify the class
32 members;

1 4. A preliminary injunction prohibiting the acts herein
2 complained of.

3
4 At the Conclusion of the Case

5 1. Judgment declaring that Defendants have violated
6 the rights of Plaintiff and her class and enjoining all similar
7 acts in the future, and ordering the destruction of all informa-
8 tion, files, data banks, and other material unlawfully compiled
9 as a result of the acts complained of herein;

10 2. Judgment awarding Plaintiff and each class member
11 compensatory and exemplary damages according to proof for each
12 violation or rights that has occurred, as charged in COUNT ONE
13 and COUNT TWO, above, and in an amount of \$5.00 for each instance
14 when the exterior of envelopes, was examined without authority
15 as alleged in COUNT THREE above;

16 3. Judgment awarding costs of suit;

17 4. Judgment awarding Plaintiff's counsel a reasonable
18 attorney's fee;

19 5. Judgment granting a permanent injunction against
20 the acts herein complained of;

21 6. Other relief that the court considers proper.

22
23 DEMAND FOR JURY TRIAL

24 Plaintiff demands a jury trial.

25
26 DATED:

27 KIPPERMAN, SHAWN & KEKER
28 FRIEDMAN & SLOAN
29 MARCUS S. TOPEL

30 By 

31 WILLIAM A. BROCKETT
32

PROOF OF SERVICE BY MAIL

I am over the age of eighteen years and not a party to this action. My business address is:

407 Sansome Street, Suite 400
San Francisco, California 94111

On the date specified below, I served the attached
THIRD AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

by placing a true copy thereof (to which was attached a copy of this document) in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed to each of the following:

Alvin H. Goldstein
Tuckmsn, Goldstein & Phillips
555 California Street, Suite 3180
San Francisco, California 94104

James A. Bruen
Assistant U.S. Attorney
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San Francisco, California 94102

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111 Sutter Street
San Francisco, California 94111

John G. Milano
Milano & Cimmatt
1545 Russ Building
235 Montgomery Street
San Francisco, California 94104

Executed on February 20, 1976, at San

Francisco, California.

I, DINAH ROBERTS, declare under penalty of perjury that the foregoing is true and correct.


DINAH ROBERTS

PROOF OF SERVICE BY MAIL

I am over the age of eighteen years and not a party to this action. My business address is:

407 Sansome Street, Suite 400
San Francisco, California 94111

On the date specified below, I served the attached
THIRD AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

by placing a true copy thereof (to which was attached a copy of this document) in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed to each of the following:

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Washington, D.C. 20530

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George Bush
Central Intelligence Agency
Washington, D.C.

Marcus S. Topel
360 Pine Street, Penthouse
San Francisco, California

Stanley J. Friedman
680 Beach Street #436
San Francisco, California

(SEE ATTACHED PAGE 1 FOR ADDITIONAL NAMES)

Executed on February 20, 1976, at San Francisco, California.

I, DINAH ROBERTS, declare under penalty of perjury that the foregoing is true and correct.


DINAH ROBERTS

STATINTL

Next 1 Page(s) In Document Exempt